

**MINUTES
HAMPTON ZONING BOARD OF ADJUSTMENT
THURSDAY, JANUARY 18, 2007**

MEMBERS PRESENT: Robert Vic Lessard, Chairman
Tom McGuirk, Vice-Chairman
Jack Lessard, Acting Clerk
Jennifer Truesdale
Matt Shaw

OTHERS PRESENT: Kevin Schultz, Building Inspector
Angela Silva, Recording Secretary

The Chairman called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance to the Flag. He then introduced the members of the Board and announced that Petition #70-06 has been withdrawn from the agenda this evening. They will be resubmitting with a new petition.

60-06 The continued petition of Edward Ebinger for property located at 18 Island Path seeking relief from Articles 4.1, 4.1.1, 6.4.2, 8.2.1, 8.2.2, 8.2.3, 8.2.4, 8.2.5 and 8.2.6 to demolish 3 existing dwelling units in two buildings and replace with 3 dwelling units in one building. This property is located at Map 282, Lots 20 and 21 in a BS zone.

Atty. Craig Solomon came to the table to represent the petitioner. He submitted a letter of authorization to the Board. He explained that there are 3 dwelling units on the lot in 2 structures. He submitted to the Board a photo of the existing buildings. The proposal is to tear these down and build 1 new structure with 3 units that is more conforming in several ways. One building is right on the property line on the west side and 1.5 feet from the north property line. The proposal conforms to the setbacks in the area except for Article 8. The new building is further away from the wetlands than the existing structure. The parking is improved and the impervious surface is reduced. Floor plans and elevation plans drawn by an architect were submitted to the office on December 26th, he said. The Board determined that 1 set is in the main file.

Atty. Solomon said the ground floor unit will be half of the building, the other half will be garage. The second and third floors will each contain 1 unit. Parking for these 2 units is outside. Article 4 is on the petition because the lot is undersized for this zone. It is 3,080 square feet. And it is undersized for the "per dwelling unit" calculation. Article 6 is for the stacked parking. The parking spaces are undersized. They are 17 feet instead of the required 18 feet. This lot can't even begin to meet Article 8 requirements. He then read through his answers to the 5 criteria as submitted with the petition. This is not contrary to the public interest as it will be new construction, it will meet the setbacks and there will be adequate parking on-site. Special conditions exist because there are 3 existing units, 50 feet of frontage, and a small lot. They want to take it down and make it better. This use is permitted in this zone. There's no other way to do this given the size of this lot. The 3 units are grandfathered. The proposal is for 3 more conforming units. If this were a single family or duplex, the setback would be met with the new proposal. We conform to the height requirements and the setbacks in this zone.

Questions from the Board:

Mr. McGuirk asked if they would need to go to the Conservation Commission? Atty. Solomon replied that he will file for a Special Permit with the Planning Board after he receives approval here. He feels this is the first step.

Mr. Schultz added that even if this were a single family it would need a Special Permit.

Comments from the Audience: None.

Back to the Board:

Mr. Vic Lessard asked the number of bedrooms, before and after? Adding he agrees this new construction would be an advantage for all the people in the neighborhood. Mr. Solomon isn't sure of the number of existing bedrooms.

Ms. Truesdale MOVED to approve the petition.

Mr. Shaw is concerned with the bedrooms. One of them is only 8 feet wide.

Mr. McGuirk is concerned. This is a very substandard lot; 3,080 s.f. and within the wetlands conservation buffer. His sister built a single family on a 3,200 s.f. lot and that was small. 26 Island Path was discussed. He would like to see the building envelope after Conservation Commission review.

Atty. Solomon said he can't get Site Plan Approval without the Special Permit and these Zoning Variances. He advised his client to go to this Board first. The wetlands have been flagged. He's trying to do this in a logical order.

Mr. Vic Lessard offered to word the approval so that there's no increase in bedrooms.

Mr. McGuirk doesn't want to approve just because it exists. We have zoning now. Maybe it didn't exist then. When these buildings are torn down, the grandfather status goes away. The Board discussed past practice.

Mr. Schultz reported there are 8 bedrooms on the proposed plan. Mr. McGuirk said that's 8 cars in his book. Mr. Vic Lessard agrees their pushing the parking with 8 bedrooms.

Ms. Truesdale AMMENDED her motion to include 2 conditions: a. subject to all necessary approvals, b. no increase in bedrooms.

Mr. McGuirk added they don't even come close to square foot per dwelling unit, not even for one (unit).

The Board discussed the fact that the new building will be farther away from the wetlands at the rear property line. The Board discussed the proposed bedroom sizes. Mr. McGuirk proposed 2 units would be better with all the parking underneath.

Mr. Solomon was not able to determine the number of existing bedrooms. Mr. Ebinger will be using the bottom unit and his daughter would use one. He would agree not to change the number of bedrooms. Mr. McGuirk responded that the building is going to be there longer than him and we have condo conversions without enough parking now.

Ms. Truesdale WITHDREW her motion.

Atty. Solomon asked the Board to withdraw his petition without prejudice?

Mr. Jack Lessard MOVED to allow him to withdraw without prejudice, SECONDED by Ms. Truesdale.

VOTE: FOR 5, OPPO 0

MOTION PASSES.
PETITION WITHDRAWN.

61-06 The continued Appeal of Administrative Decision by Walter J. Wyse and Andrew Guthrie for property located at 31-33 Ocean Boulevard appealing the decision of the Hampton Planning Board, September 6, 2006, ruling that the proposed condominium consists of motel rooms, not dwelling units. See Section 1.6 – Definitions; Article VIII. This property is located at Map 296, Lots 20, 32 and 33 in a BS zone.

Walter Wyse and Andrew Guthrie, petitioners, and Atty. Craig Solomon spoke on this petition. Mr. Solomon summarized that this petition was continued from the December meeting so that the Board could meet with the Planning Board. He also reiterated that they think the Planning Board made a determination that the property is a motel and they feel it can be both a motel and a dwelling unit. Their argument is that it can be both, and if it is both then the higher standards (parking and setbacks) shall apply per RSA 674:17.

The Board discussed the current Zoning Amendments proposed for the 2007 Warrant allowing 330 square feet of sleeping area in a motel unit. The Board and the petitioners discussed the legality of the changed amendments and fact that these amendments are law until after Town Meeting. Atty. Solomon feels this petition was before these changes and has the prior ordinance to adhere to. There followed discussion on the higher end motels that people have visited and they do have a sitting areas and small kitchens. Visitors and parking were also discussed.

Atty. Solomon is persistent that this proposal meets the requirements of a dwelling unit. It has sleeping, living, cooking and eating facilities. This project meets both definitions and therefore needs to adhere to the higher standards.

Mr. Shaw commented on how many people have parking and their company comes and parks everywhere. Mr. McGuirk is concerned with exacerbating the parking problem at the beach.

Comments from the Audience:

Atty. Saari is persistent that motels have microwaves and small kitchens for people to warm up left overs and eat small, quick meals at the hotel room. This will not stop them from going out to eat, he said. People on vacation usually are in one car, families with children. The Planning Board didn't make this decision lightly. They had Town Attorney advice. The room size is larger than the typical Hampton Beach unit, but it's not much different from when you travel the country and rent a unit for a week. This is essentially a suite hotel. If you came up here for vacation, would you say you're going to cook in the microwave?? Everybody wants amenities nowadays, i.e. internet access, cable TV, refrigerator, microwave. He advised the Board that this isn't something they should look at lightly. This property will probably be too expensive for your typical Hampton Beach winter/monthly renter.

Mr. Vic Lessard agrees, when you're on the road and stop at nice hotels you're going to get a lot of these amenities. He's also seen every car have sticker that's allowed to park in the lot. He doesn't think the Board is going to handle this lightly. We know this can go to court.

The Board discussed court and an outside attorney. Mr. Solomon said part of the problem with this is there's a lot of anecdotal evidence. He had a timeshare up north and people can visit. People can stay there up to 90 days. He has a client with a motel that is also used as winter rentals.

We're in Hampton, we have to look at what the Hampton Zoning Ordinance says. Amenities are not the issue. It's adequate parking and setbacks. Keep focus on the Hampton ordinance. Does this meet the definition of a dwelling unit and can it be both.

Atty. Saari asked "If we take out that microwave, what does it do for the beach?"

Mr. Guthrie argued that the State definition of a dwelling unit doesn't say anything about permanent cooking facilities. Most of Hampton's visitor's come from the Merrimack Valley. They might stay for the summer and rent for the winter. They need 49 spaces. We've already lost enough parking at the beach. We appreciate the fact that the Zoning Board is looking at this. It looks like a duck, walks like a duck and talk like a duck, it's a duck.

Ms. Truesdale feels that people are not going to make this a destination for 3 to 6 months based on a microwave. Mr. Shaw, who works for Coca-Cola said there's no winter rentals anymore down there. His sales are way down this winter. They may not find anyone to rent here.

Mr. McGuirk said his family rents hotel rooms on Hampton Beach. They have microwaves. They don't worry about people not eating out. He doesn't care about the size of units as long as there's adequate parking. Linking the two was discussed during the talk with the Planning & Zoning Boards. He doesn't want to spend the Town's money in court. When the proposed article was changed at the public hearing it changed the whole intent of the article.

The Board discussed the requirements for a hotel verses a dwelling unit. The form of ownership has nothing to do with it. If these were considered dwelling units, the project would have many more issues than parking, many more articles.

Atty. Saari said he doesn't feel they have permanent cooking facilities. Take the microwave out and put them at the front desk, he said.

Mr. Schultz said this presents other difficulties in his department with the 89 days maximum occupancy. Sometimes it's so complex it's impossible. Mr. Vic Lessard commented that the units at the Ocean Club have 330 square feet of sleeping quarters and a microwave.

Ms. Truesdale MOVED to deny the appeal based on the fact that these are hotel rooms.

Mr. McGuirk explained that at the Planning Board and Zoning Board joint meeting they came up with the thought that different sized rooms and total rooms should require different parking. What was discussed and what was presented as a zoning amendment were two different things. What was discussed was that there wasn't any definition right now.

The Chairman allowed for further motions or a second. There were none. The Board discussed what this means. Mr. Schultz feels if there's no action, then the appeal is not approved. Atty. Solomon said this is the first level of appeal. Atty. Saari said the statute requires 3 votes. The higher court (ZBA) refuses to hear it, then the lower court (PB) stands.

The Chairman decided that the Board has decided to TAKE NO ACTION.

01-07 The petition of Bradley Schuler for property located at 815 Ocean Boulevard seeking relief from Articles 1.3, 4.5.1, 4.5.2 and 4.5.2 (Footnote 26) to remove existing rear addition and erect two story addition where closest portion will be 8.5' from side line and remove existing second floor room on front and replace with deck over existing first floor. Deck will be 9.5' from side line where 8.5' exists and 10' is required and 7.8' from front line where 6.8' exists and 20' is required. This property is located at Map 197, Lot 33 in a RA zone.

Bernard Christopher, of Great Woods Post and Beam Company and Brad Schuler came to the table to speak on the petition. Mr. Christopher said they want to renovate and update the property. It is currently in disrepair and nonconforming. They want to take down an approximately 11 foot by 7-foot addition and replace it with a 11-foot by 28-foot addition that will have an 8.5-foot setback, and 5.5 feet setback to an existing by window. He then read through the 5 criteria as submitted with the petition.

Questions from the Board:

Mr. Vic Lessard asked how many bedrooms are proposed? Mr. Christopher answered that 4 exist and they may have 3 or 4 when they're done.

Comments from the Audience: None.

Back to the Board:

Mr. McGuirk thinks it's great that they're keeping the facades the same as the Hampton Beach Area Commission would like.

The bow window was discussed. Mr. Lessard spoke of the blanket variance requested by the Selectmen in the 80's when the leased land sales project was set up.

Mr. Jack Lessard MOVED to approve the petition, SECONDED by Mr. McGuirk.

The Chairman polled the Board on the acceptance of the 5 criteria and they all agreed. The Chairman noted that there was a letter in the file from an abutter supporting the petition.

VOTE: FOR 5, OPPO 0

MOTION PASSES.
PETITION GRANTED.

02-07 The petition of Thomas Broderick & Steve McGuire, Members Keeley Ann Development LLC for property located at 2-4-6 Keefe Avenue seeking relief from Articles 1.3, 4.5.1, 4.5.2, 4.5.3, 4.8 and 8.2.3 (multi-family setbacks) to replace an existing exterior, unsafe and unattractive stairway, landing and deck with roof with a lesser structure; including new stairway, landing and deck without roof; all constructed to code. Replace pre-existing 4'x6' storage room with new 4x5 storage room, allow continuance of pre-existing non-conforming side, rear and front setbacks if not specifically requested in above renovations, as well as existing 13.5% pervious area - no further pavement to be added. This property is located at Map 290, Lot 72 in a RB zone.

Mr. Broderick and Mr. McGuire came to the table to speak on this petition. Mr. Broderick said he met with the neighbors and modified the proposal. He brought the upper deck back to where it exists and the storage has been moved to the middle. They will still be removing the roof from the existing deck. They will be demolishing the cement block structure. The proposal will shrink to 16 feet from the westerly sideline. There is 13.5% pervious surface. There are 5 pre-existing residential units. They are replacing a very unsafe deck and stairway that is an eyesore with a much safer stairway and deck that is within code and will add to the neighborhood.

Questions from the Board:

Mr. Vic Lessard asked if the building will be resided? Mr. Broderick answered yes.

Comments from the Audience:

Mr. Bob Martel, rear abutter, said he has no problem at all with the construction. But he is concerned with water draining onto his property due to the snow storage area and runoff from the roof.

Mr. Broderick responded that one of the reasons the deck was designed as it is on the plan is to allow more room in that area for the snow storage. There's about 24 feet from the parking spaces to the rear property line.

Back to the Board:

Ms. Truesdale commented that he's made quite a bit of changes from the last time.

Mr. McGuire summarized that there are 5 existing units. He's reducing the bedrooms from 11 to 9 and adding a little bit more green space by eliminating the concrete.

Mr. Vic Lessard asked if it was rented year round before? And commented that there's not a very big area for snow storage. Mr. Broderick answered no it wasn't rented year round. There is an area 24.5 x 16 feet for snow. That's 384 square feet and there another area 7.9 x 14 feet in front of parking space #5.

The Board discussed, with the petitioner and the abutter, having the snow removed if it was too cumbersome. The petitioners agreed they could haul it away if it amounts to too much or starts to affect the abutter.

Mr. McGuirk MOVED to approve the petition with the stipulation that snow is to be removed after accumulating 5 feet or if water diverts onto the neighbor's property, SECONDED by Ms. Truesdale.

The Chairman polled the Board on their acceptance of the 5 criteria and they all approved.

VOTE: FOR 5, OPPO 0

MOTION PASSES.
PETITION GRANTED.

BUSINESS MEETING:

Mr. Jack Lessard MOVED to accept the December 21, 2006 minutes with minor corrections, Mr. McGuirk SECONDED.

VOTE: FOR 5, OPPO 0, ABST 1(MS)

MOTION PASSES.

Ms. Jack Lessard MOVED to accept the November 16, 2006 minutes with minor corrections, SECONDED by Mr. McGuirk

VOTE: FOR 3, OPPO 0, ABST 2(MS,JT)

MOTION PASSES.

Ms. Truesdale MOVED to adjourn the meeting at 9:16 p.m., SECONDED by Mr. Jack Lessard.

VOTE: FOR 5, OPPO 0

MOTION PASSES.
MEETING ADJOURNED.

Respectfully submitted,

Angela Silva,
Re

ording Secretary.